IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 27/1997

The Economic Development
Corporation of Goa, Daman & Diu
Ltd., Panaji, having office at EDC House
Dr. Atmaram Borkar Road,
Panaji, Goa. ..... Appellants.

V/s.

1. Communidade of Morombi -O-
Pequeno a body constituted
under the Code of Communidade
through its Attorney having its
Office at Merces, Goa

2. Deputy Collector,
Goa North Division, Panaji.

3. Julio B. de Oliveiro,

4. Antonio Caetano Fernandes
(since deceased through LRs.)
(1)Laura Francisca Fernandes;
(2)Joao Domingos Fernandes;
(3) Raul Francsico Fernandes,
(4)Oswaldo Anjos Fernandes;
All residents of Bairo Bodir,
Santa Cruz, Ilhas, Goa.

5. Joaquim Mariano Fernandes
resident of Merces, Goa. ..... Respondents.

Mr. M. S. Sonak with Miss Pooja Bharne, Advocates for the appellants.

Mr. A. R. Kantak, Advocate for the respondent No.1.

CORAM : R.M. LODHA, J.

DATE : 29th September, 2005.

ORAL JUDGMENT

This first appeal is at the instance of the Economic Development Corporation of Goa (for short, `the Corporation') aggrieved by the Judgment and Award dated 29.6.1996 passed by the Additional District Judge, Mapusa in Land Acquisition Case No.45/1982. By the said Judgment and Award, the Additional District Judge, Mapusa enhanced the compensation for the salt pan land at the rate of Rs.65/- per sq. metre, for the paddy land at the rate of Rs.100/- per sq. metre and nallah at the rate of Rs.25/- per sq. metre.

2. The Corporation needed the land for its development project. By the notification issued under Section 4 of the Land Acquisition Act on 10.7.1980 and published in the Official Gazette on 24.7.1986, the vast tract of land comprising 87,278 sq. metres was proposed to be acquired for the Corporation. The land sought to be acquired comprised of paddy fields, salt pans and nallah and

included the subject-land surveyed under Chalta No.70 of P.T. Sheet No. 17 admeasuring 13,000 sq. metres. The Notification under Section 6 of the Land Acquisition Act was published in the Official Gazette on 19.2.1981. The Land Acquisition Officer passed the Award fixing the market value of the lands comprising of salt pan at the rate of Rs.12/- per sq. metre, paddy field at the rate of Rs.20/- per sq. metre and for the nallah land at the rate of Re. 0.50 per sq. metre. The claimant-respondent No.1 sought reference. The matter was, accordingly, referred to the District Judge, North Goa, Panaji vide Land Acquisition Case No.45/1982. In the statement of claim before the Reference Court, the claimant averred that there existed a salt pan admeasuring an area of 12,140 sq. metres which was leased to Julio B. de Oliveira. Around the said salt pan, there existed the paddy field. The salt pan had an area of 12,140 sq. metres. Out of that 2804 sq. metres was acquired by the earlier notification and an area of 9336 sq. metres of salt pan remained. Near the said salt pan, there existed an area bearing Lote No.192 belonging to the claimant. The Lote No.192 was a paddy field and not tenanted. The acquired land of the paddy field had an area of 3664 sq. metres. In the statement of claim, the claimant claimed compensation at the rate of Rs.50/-

per sq. metre for the acquired land.

3. The Land Acquisition Case No.45/82 was consolidated with the Land Acquisition Case No.44/82 and other matters for the purposes of recording evidence and common award vide Order dated 24.2.1986 in Land Acquisition Case No.44/82.

4. As stated above, the Reference Court vide Judgment and Award dated 29.6.1996 awarded the compensation for the land under paddy field at the rate of Rs.100/- per sq. metre; for salt pan at the rate of Rs.65/- per sq. metre and for nallah Rs. 25/- per sq. metre. Aggrieved by the said Judgment and Award, the present first appeal has been filed.

5. On 21st September, 2005, First Appeal No.17/1997 was heard and disposed of by me. The said First Appeal No.17/97 arose out of Land Acquisition Case No. 31/1982. As a matter of fact, by the common Judgment and Award dated 29th June 1996, the learned Reference Court heard and decided 27 land acquisition references under the same notification that included the Land Acquisition Case No.31/82 as well as Land Acquisition

Case No.45/82. In my Judgment dated 21.9.2005 in First Appeal No. 17/97 for the acquisition of salt pan land under the same notification of the similarly situated land, I held that the Judgment and Award of the reference Court fixing the market value at the rate of Rs.65/- per sq. metre did not warrant any interference. In this connection, I relied upon the Judgment of the Supreme Court in the case of ***Communidade of Morombi-O-Pequeno vs. State of Goa,*** (2004) 12 SCC 430 and held that the Judgment of the Supreme Court in the case of ***Communidade of Morombi-O-Pequeno vs. State of Goa, (supra)*** was applicable on all fours to the facts of the case.

6. The learned Counsel for the appellants did not dispute that in the light of my Judgment dated 21.9.2005 in First Appeal No.17/97, the market value of the salt pan land could be fixed at the rate of Rs.65/- per sq. metre. He, however, submitted that in the present case, in the statement of claim made before the Reference Court, the claimant has prayed for the compensation at the rate of Rs.50/- per sq. metre and, therefore, in the light of the then existing Section 25 of the Land Acquisition Act, the claimant shall not be entitled to the compensation above the rate of Rs.50/-

per sq. metre. The learned Counsel for the appellants also submitted that the Reference Court has erred in awarding compensation for 13000 sq. metres of land when only 9336 sq. metre of salt pan land was acquired. According to him, out of 13000 sq. metres of land, 2802 sq. metres was acquired by previous acquisition and, therefore, no compensation could have been awarded for 13000 sq. metres of land.

7. The learned Counsel for the claimant submitted that as per the Judgment delivered on 21st September, 2005 in First Appeal No.17/97, the market value of the salt pan land deserves to be fixed at the rate of Rs.65/- per sq. metre and for the land comprising of paddy field admeasuring 3664 sq. metres, the market value deserves to be fixed at the rate of Rs.80/- per sq. metre as per the Judgment of the Supreme Court in the case of ***Communidade of Morombi-O-Pequeno vs. State of Goa, (supra).*** The learned Counsel for the appellants submitted that the Land Acquisition Case No.45/82 out of which the present first appeal has arisen was consolidated with the Land Acquisition Case No.44/82 and in that case, the claim application was amended and the compensation for the acquired land at the rate of Rs.200/- was sought. The said

amendment was allowed and, therefore, in Land Acquisition Case No.45/82 also the pleadings must be read in the light of the amended pleadings in Land Acquisition Case No.44/82. The learned Counsel for the claimant also submitted that the claimant is entitled to the compensation for salt pan land admeasuring 9336 sq. metres at the rate of Rs.65/- per sq. metre and the paddy land admeasuring 3664 sq. metres at the rate of Rs.80/- per sq. metre.

8. I reflected over the matter and perused the available material. It is not in dispute that the compensation for the land that was under consideration in the case of ***Communidade of Morombi-O-Pequeno vs. State of Goa, (supra)*** before the Supreme was similar to the subject-land. That land was acquired pursuant to the notification under Section 4 of the Land Acquisition Act published on 11.11.1977 i.e. about three years prior to the notification under Section 4 of the Land Acquisition Act whereby the subject-land was sought to be acquired. In that case for the salt pan land situated very close to the subject-land which was acquired in the year 1977, the market value was fixed by the Reference Court at the rate of Rs.60/- per sq. metre and for the paddy land the market value was fixed at the rate of Rs.80/- per sq.

metre and that was upheld by the Supreme Court. In First Appeal No.17/97 decided by me on 21st September, 2005 arising out of Land Acquisition Case No.31/82 which was decided along with Land Acquisition Case No. 45/82 and other matters arising out of the same Judgment and Award of the Additional District Judge, Mapusa passed on 29th June, 1996, I held that there was no justifiable ground for interfering with the Judgment and Award of the Reference Court fixing the market value of the salt pan land at the rate of Rs.65/- per sq. metre.

9. However, in the present case the claimant is faced with one difficulty for award of compensation at the rate of Rs.65/- per sq. metre. That difficulty is that in the statement of claim before the Reference Court, the claimant prayed for compensation at the rate of Rs.50/- per sq. metre for the acquired land.

10. Section 25 of the Land Acquisition Act was amended by the Act 68 of 1984 with effect from 24.9.1984. In the case of ***Land Acquisition Officer-cum-DSWO, AP v. B.V. Reddy and sons,*** (2002) 3 SCC 463 the Supreme Court held that the provision contained in Section 25 of the Land Acquisition Act was

substantive in nature and the question of applicability of the amended provision of Section 25 of the Land Acquisition Act to an award of the Collector made earlier to the amendment would not arise. The Supreme Court ruled that the amended provision of Section 25 was not retrospective in nature.

11. While dealing with the question whether Section 25 could be construed to be procedural in nature or substantive, the Supreme Court held thus :

> " So far as the first question is concerned, on a plain reading of the same, it is difficult for us to hold that it is procedural in nature. On the other hand, it is unequivocally limits the power of the court on a reference being made to award compensation, more than the amount claimed by the claimants and less than the amount awarded by the Collector. In other words, the substantive right of a claimant who has made a claim to the compensation, pursuant to a notice under Section 9, cannot be more than the amount claimed and under any circumstances, would not be less than the amount which the Land Acquisition Collector has awarded under Section 11, since that award of the Collector is the offer

that is made to the claimant. In course of the arguments, Mr. Rao, the leaned counsel for the claimants submitted before us that sub-section (5) of Section 25, as it stood prior to its amendment, gives sufficient power to the Reference Court to entertain a claim if the claimant had omitted to make such claim pursuant to the notice issued under Section 9 and determine the compensation on that. Consequently, Mr. Rao contends that there should not be any embargo on the power of the court even if the claimant makes a claim pursuant to the notice issued under Section 9. We are unable to accept this submission inasmuch as sub-section (5) of Section 25 contemplates a situation where the claimant for sufficient reason had omitted to make a claim and the Reference Court on being satisfied about the same may permit the claimant to make a claim. But the unambiguous and clear language of sub-section (1) of Section 25, as it stood prior to the amendment, makes it explicitly clear that if the claimant has made a claim pursuant to a notice under Section 9, then the court would be incompetent to award any amount exceeding the said claim. In our considered opinion, sub-section (5) of Section 25 will be of no assistance to the claimant-respondents in the present case.

> Incidentally, we may deal with the submission of Mr. Rao that the amount claimed was by the lawyer and not by the claimant himself and therefore, cannot be held to be a claim by the claimants, pursuant to the notice under Section 9 of the Act. On examining the records of the case, we do not find any justification to entertain this submission, inasmuch even in the application made for reference under Section 18, the claimant had not taken such a stand. It would, therefore, be futile for us to entertain this contention and hold that the claim made by the claimants through his lawyer cannot be held to be a claim by the claimants. This Court in the very case of Krishi Utpadan Mandi Samiti on which the learned counsel for the respondents had placed reliance, considered the provisions of Section 25 and held that the said provision can never be held to be procedural and it is substantive in nature. We approve of the said conclusion and hold that the provision of Section 25 of the Land Acquisition Act is substantive in nature."

12. To the other question as to if Section 25 was held to be substantive in nature, then can the amended provisions of Section 25 of the Act apply to a case where the award of the Land

Acquisition Collector had been made much prior to the amendment in question, the Supreme Court considered the matter thus :

> "Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24.9.1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30.4.1982 and came into operation with effect from 24.9.1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium were amended and Section 30(2) of the amended Act provided that the provisions of sub-section (2) of Section 23 of the principal Act as amended by clause (b) of Section 15 shall apply and shall be deemed to have applied, also to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act, after 30.4.1982 and before the commencement of the Act. It is because of the

> aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in Union of India v. Raghubir Singh. Sub-Section (2) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act."

13. In the light of the legal position explained by the Supreme Court on consideration of the amended Section 25 of the Land Acquisition Act, it admits of no ambiguity that the present case is governed by the unamended Section 25 which provided an embargo that the amount to be awarded to the claimant shall not exceed the amount claimed. It is not in dispute that the Land Acquisition Officer has given the Award on 2.5.1981 and the matter was

referred to the District Court much before coming into force of the amended Section 25 of the Land Acquisition Act. In the light of the then existing Section 25 before the amendment, the claimant's compensation has to be restricted only to Rs.50/- per sq. metre for the land acquired.

14. I, therefore, hold that though the market value of the subject-land comprising of salt pan on the date of publication of notification under Section 4 was Rs.65/- per sq. metre as held by me in First Appeal No.17/97 decided on 21.9.2005, but, since the claimant claimed compensation at the rate of Rs.50/- per sq. metre for the land acquired, by virtue of then existing Section 25 of the Land Acquisition Act, the claimant cannot be awarded the amount of compensation in excess of the amount claimed.

15. As regards the other contention raised by the learned Counsel for the appellant that the Reference Court ought not to have awarded compensation for 13000 sq. metres as out of that 2804 sq. metes was already acquired in the previous acquisition, suffice it to say paragraph 29 of the impugned Judgment and Award is somewhat confusing. This was even admitted by the

learned Counsel for the claimant. However, in the light of the statement of claim made by the claimant, it is clear that though the entire land that was acquired was 13000 sq. metres` out of that 9336 sq. metres of land was salt pan land and 3664 sq. metres was paddy field. This is made clear by a look at paragraphs 7 and 8 of the statement of claim. Paragraphs 7 and 8 read thus :

> " 7. That in the present case, the Govt. has said to be acquired an area of 13,000 sq. metres as salt pan. That at no time there existed the salt pan of an area of 13,000 sq. metres. It was 12,140 sq. metres when it was first leased to the tenant. Further, in an earlier acquisition case, an area admeasuring 2804 sq. metres was acquired by the Govt. from the salt pan. Hence the area that ought to have remained as regards the property surveyed under Chalta No.70 P.T. Sheet No.17 is 9336 sq. metres. Therefore, as a lessee, the maximum compensation that could have been awarded to Shri Julio B. de Oliveira could be in respect of 9336 sq. metres.
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> 8. The claimants state that near the said salt pan there existed an area bearing Lote No.192 and belonging to the claimants. This Lote No.192 was a paddy field and the same was never

> tenanted. Hence, the entire compensation in respect of Lote No.192 was payable to the claimants. That inadvertently the area oaf Lote No.192 has been included in the salt pan, i.e. in 13,000 sq. metres and the compensation erroneously awarded as if the said land was a salt pan. The claimants therefore, submit that the Lessee Julio B. de Oliveira can in no case get compensation for more than 9336 sq. metres. As regard the balance area, the compensation sought to be paid entirely to the claimants as the said land was never tenanted. Further, the compensation should be assessed as a paddy field and not as a salt pan, as was done by the LAO."

16. As a matter of fact, there was no challenge to the averments made in paragraphs 7 and 8 of the statement of claim by the present appellant in their written statement. It, therefore, has to be held that the land acquired admeasured 13000 sq. metres.

17. The Judgment and Award passed by the Additional District Judge, Mapusa is modified as indicated above in as much as the claimant shall be entitled to the compensation of salt pan land @ Rs.50/- per sq. metre. The other statutory benefits granted by the Reference Court are maintained. The first appeal is disposed of

accordingly with no order as to costs.

R.M. LODHA, J.

ssm